UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DEVON V JONES	)	CIVIL ACTION NO
Plaintiff	)	1:17-cv-189
v.	)	
	)	
NATIONWIDE ADAVANTAGE MORTGAGE COMPANY	)	
Defendant	)	

FILED APR 20 2017 Clerk U.S. District Court Greensboro, NC BY:

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR DISMISSAL

TO THE HONORABLE DISTRICT COURT JUDGE:

NOW COMES Plantiff, Devon V Jones, and files this, Plantiff's Response to Defendant's Motion for Dismissal and asks the Court to deny the motion in its entirety.

A. INTRODUCTION

1. Plaintiff is Devon V Jones, Defendant is NATIONWIDE ADVANTAGE MORTGAGE COMPANY.
2. Mr. Jones sued the Defendant for breach of contract (Count 1).
3. Defendant filed a motion for dismissal for failure to state a claim upon which relief can be granted.
4. Mr. Jones files this response requesting the Court deny Defendant's motion.

B. ARGUMENT

5. When considering a defendant's motion to dismiss, a court must accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff. True v. Robles, 571 F.3d 412, 417 (5th Cir. 2009). If the complaint alleges enough facts to state a claim to relief that is plausible on its face, a court should deny the defendant's motion.

6. In Plaintiff's First Amended Complaint and Jury Demand, Mr. Jones alleged a claim for, breach of contract. The complaint provides Defendant with fair notice of the claim.
7. In support of his claim of breach of contract, Mr. Jones alleged that: (a) Mr. Jones had a mortgage with the Defendant; (b) Mr. Jones disputed the amount owed on mortgage; (c) Mr. Jones offered an accord and satisfaction to the Defendant; (d) Mr. Jones sent said offer to the specific person, place or area for the Defendant; and (e) Defendant accepted the offer by cashing not one but two accord and satisfaction instruments: after acceptance the defendant is denying the contract that they entered into. See Docket No. 9, Plaintiff's Amended Complaint.
8. In its Motion for Dismissal (Dkt. #10) and its Brief in Support of Motion for Dismissal (Dkt. #11), Defendant's argument is limited to its claim that they did not engage in a new contract.
9. Defendant could have returned and not cashed the instrument according to UCC § 3-311 and also NCGS § 25-3-311.

C. CONCLUSION

10. Because Mr. Jones stated a claim on which relief can be granted, the Court should deny Defendant's motion and retain the case on the Court's docket.

Respectfully Submitted,

April 20, 2017

By ____________________

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CERTIFICATE OF SERVICE

I certify that on April 20, 2017, I served a copy of the foregoing on opposing counsel via First Class Mail.

By ______________________

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